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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/634,204	08/09/2000	John W. Geurtsen	81527	4194

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EXAMINER
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PURVIS, SUE A

ART UNIT	PAPER NUMBER
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1734

DATE MAILED: 10/28/2003

13

Please find below and/or attached an Office communication concerning this application or proceeding.

A 8-13

# Office Action Summary

Application No.

09/634,204

Applicant(s)

GEURTSEN ET AL.

Examiner

Sue A. Purvis

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 22 September 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1,4-12,16-20 and 22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,4-12,16-20 and 22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claim 19 is rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention. Claim 19 includes the feature that the contact plate has a pivot point “along its length”. Applicant amended claims 18 and 20 to remove this language based on examiner’s previous Office Action, but failed to amend claim 19. The support applicant pointed out for this feature does not enable an artisan to understand what applicant means when using the terminology “along its length”.

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 19 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 19 includes the feature that the contact plate has a pivot point “along its length”. It is unclear what the applicant is trying to claim here. Pivot point (129) is located at one end of

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the contact plate as seen in Figure 6. There seems to be no way to have the pivot point be “along its length”.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 18 is rejected under 35 U.S.C. 102(b) as being anticipated by Hunt et al. (US Patent No. 5,988,251).

Hunt discloses a labeling device including a contact plate (5) which places a label (2) onto an object (8). (See Figures 1A through 1E.) The object (8) is advanced past the plate on conveyor (6). As can be seen in the Figure, the plate has a pivot point located within the contact plate. Figure 3 shows the pivot point for the embodiment of Figures 2A through 2C, the embodiment in Figures 1A through 1E would have the same pivot point.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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8. Claims 1, 12, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Good, Jr. in view of Wochner (US Patent No. 3,709,755).

Good, Jr. discloses a labeling machine with a decorating unit in the form of a contact plate (62) which urges the label into contact with the article. (See Figure 13; Col. 4, lines 1-12.)

The object is supported on station (22) during transfer.

The platen in Good, Jr. is not heated.

Wochner discloses a labeling system where press platens (22, 28) are heated. (Col. 3, lines 42-65.) Also in Wochner is a preheater (19, 24).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to use a heated plate, like the one disclosed in Wochner, in the device of Good, Jr. specifically when using heat transferable labels. Artisans with knowledge of labeling realize that there are many types of labels which can be used in labeling containers, labels with pressure sensitive adhesive and heat sensitive adhesive, are two of the most widely used types. If an artisan decided to use the device in Good, Jr. with heat transfer labels, it is with the purview of the artisan to heat the transfer platen in Good, Jr. as taught by Wochner.

Regarding claim 12, in addition to the heated platens, Wochner discloses preheaters located before the pressure plates (22, 28). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the preheaters into Good, Jr. along with the press plate heaters. The combination of the two would ensure that the adhesive is heated sufficiently for label transfer.

Regarding claim 19, the platen in Good, Jr. is adapted to pivot.

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9. Claims 4, 5, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Good, Jr. in view of Wochner as applied to claim 1 and 3 above, and further in view of Tagawa et al. (US Patent No. 6,402,868 B1) and Brandt et al. (US Patent No. 6,379,761 B1).

Good, Jr. in view of Wochner does not teach having a rubber layer on the heated applicator, however it would have been obvious to one having ordinary skill in the art at the time the invention was made to include a rubber layer, because it is well known that rubber helps to uniformly distribute the heat. This would help ensure the entire label is heated and the adhesive thereon are heated sufficiently. This is discussed in Tagawa. (Col. 4, lines 14-18).

Regarding claims 5 and 15, it is within the purview of one having ordinary skill in the art to use a rubber layer of 80 durometer silicone. The artisan would see the advantages of using that type of rubber. This is shown in Brandt et al. (Col. 9, lines 26-46.)

10. Claims 6-11, 16, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Good, Jr. in view of Wochner, Tagawa et al., and Brandt et al. as applied to claim 5 above, and further in view of Morin (US Patent No. 5,817,210).

Good, Jr. in view of Wochner, Tagawa et al., and Brandt et al. does not disclose have a TEFLON fiberglass covering.

Morin teaches using a TEFLON fabric sheet (107), comprised of a 6 mil Teflon, fiberglass fabric whose purpose is to substantially reduce the tendency of the rubber pad (106) to stick to a transfer sheet. (Col. 4, lines 20-41).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to include a Teflon sheet, as disclosed in Morin, in the device of Good, Jr. in view of Wochner, Tagawa et al., and Brandt et al., because Morin teaches that such a sheet

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would reduce the tendency of the transfer sheet from sticking to the rubber layer on the peeler bar. The Teflon sheet in Morin is .23 inches, however it is within the purview of one having ordinary skill in the art to use a thinner sheet, because the artisan would know what thickness of Teflon would work in the device of Good, Jr. in view of Wochner, Tagawa et al., and Brandt et al.

Regarding claims 7 and 17, it would have been obvious to one having ordinary skill in the art at the time the invention was made that the heat contact plate is capable of being heated to 450 degrees F, because it is within the purview of the artisan to know what temperature is needed to heat the adhesive on the label sufficiently to ensure the adhesive adheres to the article.

Regarding claims 8-11, these features are shown in the device of Good, Jr. as seen in Figure 1.

11. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Good, Jr. in view of Wochner as applied to claim 12 above, and further in view of Hunt et al. or Brookman et al. (US Patent No. 4,840,694).

Good, Jr. in view of Wochner does not disclose a pivot point being located with the contact plate.

Hunt discloses a labeling device including a contact plate (5) with a pivot point located within the contact plate.

Brookman discloses a pivoting plate (30) which is used to separate tabs (10) from a web (12). The plate (30) includes a pivot point within.

It would have been obvious to one having ordinary skill in the art at the time the invention was made that an alternative to having the contact plate mounted on an arm which

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pivots would be to have the pivot point within the contact plate. One having ordinary skill in the art would appreciate that these are functionally equivalent alternative expedients and see that a plate with a pivot point located within it can be used in Good, Jr.

12. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ewert et al. (US Patent No. 6,006,808) in view of Wochner (US Patent No. 3,709,755).

Ewert et al. discloses a label tamp for applying a label to an object. The contact surface extends almost the entire length of the label tamp.

The platen in Ewert et al. is not heated and a conveyor is not disclosed.

Wochner discloses a labeling system where press platens (22, 28) are heated. (Col. 3, lines 42-65.) The containers are conveyed to the labeling stations.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to use a heated plate, like the one disclosed in Wochner, in the device of Ewert et al. specifically when using heat transferable labels. Artisans with knowledge of labeling realize that there are many types of labels which can be used in labeling containers, labels with pressure sensitive adhesive and heat sensitive adhesive, are two of the most widely used types. If an artisan decided to use the device in Ewert et al. with heat transfer labels, it is with the purview of the artisan to heat the transfer platen in Ewert et al. as taught by Wochner. Furthermore, conveyors are commonly used to put articles in the position to be labeled.

### ***Response to Arguments***

13. Applicant's arguments with respect to the claims 18 and 20 have been considered but are moot in view of the new grounds of rejection.



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14. Applicant's arguments filed 22 September 2003 with respect to claims 1, 4, 5-12, 15-17, 19, and 22 have been fully considered but they are not persuasive.

15. In response to applicant's argument against Wochner, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). The examiner has relied on Wochner to show it is known to heat a label web prior to application of a label to an article. The platen in Wochner is used to heat the rollers and the web, resulting in heated surface to directly press a heated transfer label onto the object. It is the examiner's position that based on Wochner, it would have been obvious to one having ordinary skill in the art at the time the invention was made to heat the platen in Good, Jr. in order to heat the web and to directly press a heat-transfer label onto the object as is done in Wochner. The same teaching was used in the rejection of claim 22 using Ewert in view of Wochner.

16. In response to applicant's arguments against Tagawa, applicant contends the rubber layer (121) in the instant invention was provided "merely to increase the contact, or grab, between the contact plate (119) and the desired object during label transfer." The examiner was unable to find support for this contention in the specification. In fact, since a covering (122) is placed over the rubber layer (121) which is made of a thin slick material, there would be no increase in grab because of the rubber layer. The covering is designed to prevent grab. Furthermore, page 19, lines 14-22, discloses that it is preferable that the rubber layer (121) temperature changes as the

plate (120) temperature changes, thus it is the examiner's position that the teaching in Tagawa that rubber helps to uniformly distribute heat is reasonable pertinent to applicant's invention.

***Conclusion***

17. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sue A. Purvis whose telephone number is 703-305-0507. After December 20th, 2003, the examiner can be reached at (571) 272-1236. The examiner can normally be reached on Monday through Friday 8am to 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rick Crispino can be reached on 703-308-3853. The fax phone numbers for the

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organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-5665.

A handwritten signature in black ink, appearing to read "Sue A. Purvis", with a long horizontal line extending to the right.

Sue A. Purvis  
Examiner  
Art Unit 1734

sp  
October 26, 2003